

## REMARKS

In the Office Action of May 26, 2005,<sup>1</sup> claims 1-10 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-8, 12, and 15 of copending Application No. 09/832,362; and claims 11-16 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1, 2, and 6-9 of copending Application No. 09/814,178. Claims 1-16 are pending in this application.

Although disagreeing with the obviousness-type double patenting rejections, in an effort to advance prosecution, Applicants file a Terminal Disclaimer<sup>2</sup> concurrently with this paper, obviating the outstanding rejections. Applicants requests reconsideration of this application in view of the attached Terminal Disclaimer, withdrawal of the obviousness-type double patenting rejections, and the timely allowance of pending claims 1-16.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

---

<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

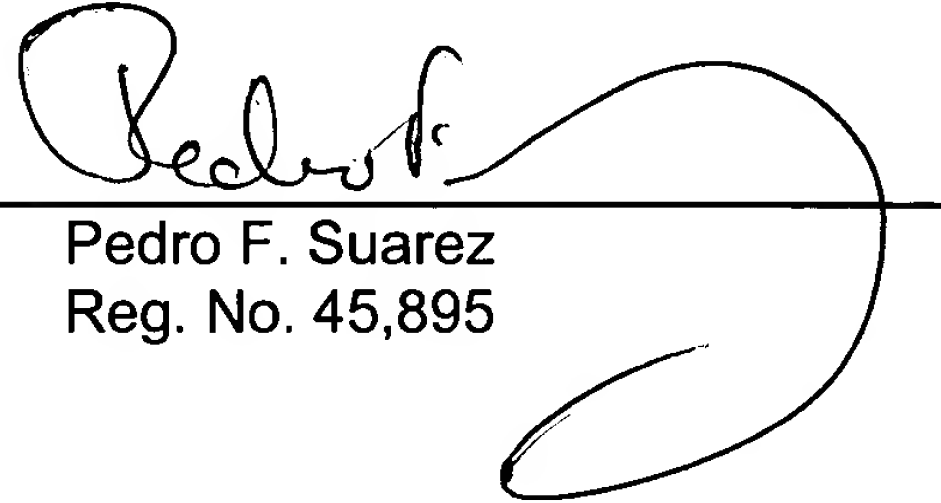
<sup>2</sup> Applicants point out that: "[t]he filing of a terminal disclaimer to obviate a rejection based on nonstatutory patenting is not an admission of the propriety of the rejection." M.P.E.P. § 804.02(II), 8<sup>th</sup> Ed., Aug. 2001, p. 800-32 (citing *Quad Environmental Tech. Corp. v. Union Sanitary Dist.*, 946 F.2d 870 (Fed. Cir. 1991)). As M.P.E.P. § 804.02(II) indicates, "[t]he Court indicated that the 'filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.'" *Id.*

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: August 26, 2005

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Pedro F. Suarez", is written over a horizontal line. The signature is stylized with a large, looping initial "P" and a long, sweeping flourish that extends to the right and then loops back down.

Pedro F. Suarez  
Reg. No. 45,895